

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

)	
In the Matter of)	
)	WC Docket No. 05-196
IP-Enabled Services)	
)	

**REPLIES OF SOUTH CAROLINA STATE 911 OFFICE TO COMMENTS OF
THE PUBLIC UTILITY COMMISSION OF TEXAS AND THE MICHIGAN
EMERGENCY TELEPHONE SERVICE COMMITTEE**

The signatories are the South Carolina state government personnel who constitute the State of South Carolina 911 Office (State 911 Office or State 911 staff), have been responsible for approving local government wireline 911 surcharge plans (State 911 Coordinator), administering the state wireless 911 surcharge, and implementing the state government's coordination and funding of Phase 1 and 2 Enhanced Wireless 911 of the Commission's Order in Docket 94-102 (State CMRS 911 Project Manager), and who now perceive some responsibility for informing subscribers and for how the South Carolina Public/Private Partnership (SC 911), to include IP-enabled services providers, should respond to all telecommunications users, to the SC General Assembly and to the Commission. These SC State 911 Office participated in the September 6, 2005 Reply of South Carolina State 911 to Comments of the Public Utility Commission of Texas (PUC) and the Michigan Emergency Telephone Service Committee, with three SC 911 Coordinator signatories who represent SC 911 Coordinators and other PSAP employees, as such, by their tacit consensus and as past and future PSAP representatives on the SC 911 Advisory Committees. Collectively, those South Carolina State 911 signatories represent South Carolina government 911. This Reply adopts that September 6, 2005 Reply of South Carolina State 911 hereunder as the Summary and Conclusions of this SC State 911 Office Reply, followed by more in depth, complex and lengthy Analysis and Synthesis.

**Summary and Conclusions of SC State 911 Office Reply to Comments
of Public Utility Commission of Texas and Michigan Emergency
Telephone Service Committee (September 6, 2005 Reply of South
Carolina State 911 to Comments of Public Utility Commission of Texas
and Michigan Emergency Telephone Service Committee)**

“... The Commission’s First IP-Enabled service 911 Report provides most of the background, bases, and premises for the analysis and synthesis summarized in the following replies to the Comments of the states of the Public Utility Commission of Texas (PUC) and the Michigan Emergency Telephone Service Committee (ETSC)

The Michigan ETSC suggests that the FCC consider a centralized mandatory registration system for IP-Enabled Service providers. The ETSC comments recommend such a system contain the provider’s 24/7 network operations center phone number and administrative contact information, along with VoIP (IP-enabled) connectivity and database information. State 911 [staff] agree, and requests additional Commission assistance in obtaining necessary provider information. IP-Enabled Service providers, along with wireline and wireless providers, are already using a national registration system specifically for E9-1-1. This NENA company-ID program already includes 24/7 numbers and administrative contact information for IP-Enabled Service, wireline, and wireless providers. NENA, the FCC and the providers could, and probably would, modify that existing program to serve their information reporting needs and those of state and local government 911, to include expanding connectivity and database information for IP-Enabled Service providers.

The Texas PUC comments that it thoroughly regulates E9-1-1 and the Commission should leave further regulation of IP-Enabled service E9-1-1 in Texas to Texas. [The] SC State 911 [Office] argues below that Texas’ request may suit Texas, but would not be an adequate approach for many of the remaining, more “light touch”, states.

SC State 911 staff also repl[y] that these other states’ Comments do not go far enough in responding to some of the Commission requests for states’ comment in this WC 05-196 Notice of Public Rule Making (NPRM).

Paragraph 61 of the Order and NPRM requests comment on “what role states [and local governments] can and should play to help implement the E9-1-1 rules [the Commission] adopts today..... Should state and local governments play a role similar to the roles they play in implementing the Commission’s wireless 911/E9-1-1 rules? How can the Commission and the states work together to ensure the public’s safety?”

The primary state role in implementing any aspect of 911 is to cooperate with the 911 Partners, especially the local 911 centers and the Commission, in the expeditious implementation of E9-1-1. Our models for doing so include wireline 911 implementation, and the ongoing wireless implementation of selective routing, ANI and ALI. However, the federal, state and local governments’ roles necessarily are different for IP-Enabled services than for wire and wireless. Perhaps the most salient reason is that the State has jurisdiction over all wireline providers, some kind of jurisdiction over wireless providers and none over most IP-Enabled service providers. Consequently it is more essential, even necessary, that the Commission promulgate any requirements and regulations necessary to the implementation of IP-Enabled service E9-1-1, including gathering any information necessary to enforcing the legal requirements it imposes. From many of the IP-Enabled service providers, only the Commission can obtain the subscriber location, selective router connection and other implementation information necessary for determining compliance with its E9-1-1 orders. Thus the state’s role is related to Paragraph 60.’s query concerning additional Commission reporting requirements of IP service providers.

As the current national IP-Enabled service 911 situation appears and South Carolina law provides, the more specific roles its local and state governments could play to help implement the Commission’s IP-Enabled service E9-1-1 rules (Par. 61.) include:

1. Continuing to fund and improve the local government 911 centers.
2. PSAPs cooperating with the Local Exchange Carrier (LEC) Selective Router, database, and IP-Enabled service providers in connecting IP-Enabled service users to the 911 Network and the PSAPs, including testing.
3. PSAP and state assisting in implementing the Commission’s IP-Enabled service 911 rules by verifying IP-Enabled service providers’ Commission compliance letter information.
4. State development of an information and form package for the State and/or SC NENA web pages, and consideration of Public Service Announcements of one kind or another. We expect to lean heavily on NENA in this matter, as we have in the past.

5. State ascertaining and contacting IP-Enabled service providers, with Commission assistance.
6. State facilitation of meetings between IP-Enabled service providers and PSAPs in jurisdictions they will serve.
7. State participation in Commission, NENA and other partner development and implementation of protocols, policy and procedure, etc. for IP-Enabled service providers' provision of E9-1-1.
8. State offering good offices upon request if there are problems between IP-Enabled service providers and database providers or LECs providing 911 selective router services regarding IP-Enabled service access to the state's selective routers.
9. State facilitating conference(s) for PSAPs, the selective LECs and the IP-Enabled service providers.
10. 8/17/2005 State development of new draft amendments to the South Carolina Public Safety Communications Center (911) Act, SC Code Section 23-47-10, et seq., re IP-Enabled service E9-1-1 users fee, or other, methods for funding of 911 Centers

Additional ways for the states and local governments to assist in the implementation and enforcement of the Commission's IP-Enabled Service E911 rules may require the Commission obtaining the information from the IP-Enabled service providers necessary to any enforcement support from the state and local government, which is also [the] SC State 911 [Office] response to Paragraph 56 (Additional Commission Steps toward implementing IP-enabled E9-1-1) as well as 60 (Additional Reporting Requirements). Thus the SC State 911 [Office] requests the Commission compliance letter include the information about the IP-Enabled service providers' operations, including 911, in the Requests of Commission # 1. below.

The Commission requiring such information is also relevant to Paragraph 61's query, "Should the Commission take any action to facilitate the states' ability to collect 911 fees from interconnected IP-Enabled service providers, either directly or indirectly?" The Order's express rulings that state and local governments have jurisdiction to assess and collect IP-Enabled service subscribers surcharge contributions to government 911 Center operations removes obstacles to proper connection of these new entrants to the existing 911 Network and state and local government 911 services. Traditionally the state and local government have been responsible for funding 911 Centers entirely. Similarly, as the Texas PUC comments, it and other strong regulation states may now or soon regulate the new IP-Enabled service 911 entrants adequately to include obtaining their subscriber contributions to supporting the 911 Centers. However the novel,

complex aspects of IP-Enabled service and its E9-1-1 implementation which distinguish it from wireline or wireless telephony and 911 suggest the Commission may need to play roles not only similar to, but greater than, it did in wireline and wireless 911 implementation.

Jurisdictional issues are prevalent in internet enabled telephony 911 implementation. As is usual whenever jurisdiction is an issue, it is a threshold, dominant, must have, determining factor. Potentially insurmountable problems in collecting surcharges arising from the state's lack of personal jurisdiction over many IP-Enabled service providers surfaced in our September '04 drafting of possible amendments to cover all South Carolina telephony numbers connecting to South Carolina 911 Centers (Public Safety Answering Points or PSAPs). The difficult and even premature questions remaining include whether these public safety necessity, national, 911 connections to government 911 services will require a Commission, a national, aspect to the state and local governments 911 Center funding solution(s). The Commission Order recognizes that the entities which do have jurisdiction over all domesticated IP-Enabled service providers are Congress and the Commission, and the resulting federal authority, and possible responsibility to require 911 Center funding contributions from these IP-Enabled service providers of telephony using our North American Numbering Plan phone number and connections with our PSTN, and thus the 911 (private) Network, and finally, the 911 Centers/PSAPs; i.e. national telecommunications networks for American public safety. However there is insufficient information, and it is premature, to determine whether only federal authorities can require fair IP-Enabled service contributions to 911 centers analogous to those made by wire and wireless subscribers, or whether, and in what way(s), the federal government should enter the field of IP-Enabled service contribution to 911 center funding and estimation of fair 911 contributions.

First there is little to no information about how much the providers and their subscribers will have to pay for this E9-1-1 connection to the Private 911 Network selective routers. Some subscribers are already paying "911 charges", such as \$1.50 a month, to their providers for the cost of this connection. Some of that \$1.50 may be underwriting some of the major IP-Enabled service providers' voluntary payment of wireline E9-1-1 surcharges. Although the providers party to that agreement maintain their compliance, there is little concrete evidence available to support those assertions. Unless the Commission requires the relevant IP-Enabled service providers' subscriber, implementation and voluntary contribution figures, it appears impossible to assess financial impact and other bases for equitable taxing

decisions. Furthermore there are presently nothing more than estimates of the financial impact of IP-Enabled services subscribers on the 911 centers.

In most jurisdictions, IP-Enabled service surcharge legislative activity would also generate IP-Enabled service provider avoidance, suspicion and antagonism concerning government as opposed to the contact, trust and cooperation needed to get their subscribers connected to the 911 Network, with ANI and "registered locations" ALI as soon as possible. Furthermore, 911 partners need to concentrate additional intellectual and financial resources on developing the partnership and solutions re the development, choice and implementation of the new true mobile IP-Enabled service ALI.

Unusually prominent in 911 implementation is the democratic/partnership methodology of bringing representatives of all interested kinds of parties to the table and seeking a somewhat consensual package which addresses the legitimate concerns of the kinds of parties while developing a public/private partnership. This is extraordinarily important in 911 because it requires major, good faith efforts, expenditures and cooperation from many industries and levels of government. It is also unusually feasible, because of 911's unequalled status, its humane, public safety efficacy, and lack of extraneous influences. However, there has been little communication between the existing 911 partners and the new internet enabled telephony entrants at the state level so far, and developing that communication should focus on working together to connect IP-Enabled service subscribers correctly and speedily, not arguing about surcharge legislation before the relevant information is available. "Sufficient unto the day is the evil (travail, dispute, difficulty) thereof." Consequently E-911 implementation considerations discourage attempting IP-Enabled service subscribers surcharge legislation.

Particularly in those state legislatures such as South Carolina's with strong "no new taxes" commitments, trying new surcharge legislation without the information requisite to determining fairness, need and other good government factors would almost certainly fail. Most of these considerations would apply to federal determination of whether to regulate IP-Enabled services contribution to funding 911 Centers at this time, as well. Consequently, the optimal Commission contribution to funding 911 Centers while implementing IP-Enabled service E9-1-1 would be to obtain the requisite information and delay deciding upon further action regarding IP-Enabled service contribution to 911 centers.

Regarding Further Commission IP-Enabled Service E9-1-1 Action (Pars. 56. and 60.), SC State 911 [Office] Requests that:

1. The Commission implement the National Internet Protocol Enabled Telephony Provider Registry requested by Michigan ETSC's Comment, such as NENA and the IP-Enabled service providers are developing.
2. The Commission's IP-Enabled service provider "Compliance Letter" collect substantial, relevant information to foster compliance with the Commission's new rules implementing IP-Enabled service E9-1-1, and assist the state and local governments in their contribution to that implementation, including determining a fair, uniform, feasible methodology, authority and system for the IP-Enabled service subscribers to contribute their fair share of 911 Center funding. Such information could include, as of the end of the month preceding the compliance letter, the states and their counties the provider serves, the names and phone numbers of the contacts for the provider and for the PSAPs of each county it serves, the date each county was first served, the date each county was contacted, the number of subscribers in that county, the total amount voluntarily paid to each county, and the amount paid to each county in the preceding month, the identity of the LEC or database contractor for that county, and the date of the relevant contract(s).
3. The Commission require IP-Enabled service providers with any subscribers in a jurisdiction to contact the local government PSAP (911 Coordinator in SC) and the State 911 contact designated by the Governor.
4. The Commission continue to work with organizations such as NENA, state governments and IP-Enabled service representatives on standards, guidelines and rules implementing fixed base or "registered" IP-Enabled service in the next few months.
5. Commission, NENA and other partners' rapid, substantial completion of their investigation of true mobile IP-Enabled service Enhanced 911; i.e. selective routing, Automatic Number Identification (ANI) and Automatic Location Identification (ALI), without user assistance and issue standards, guidelines and rules implementing "true mobile IP-Enabled service Enhanced 9-1-1 soon thereafter.
6. The Commission delay deciding on further assistance regarding IP-Enabled service users' contributions to state and local government 911 Center i.e. Public Safety Answering Point (PSAP) funding, while the Commission and states determine how the Internet enabled telephony providers are implementing their pieces of the network, what that cost

them and their subscribers, and what they are contributing to 911 Center financing.

7. Whereas we support the further Commission action suggested regarding the remaining questions raised by the NPRM, our responses are based almost entirely on principle rather than technical knowledge or understanding and we defer with confidence, to the Commission, its Intergovernmental Advisory Committee and NENA concerning their resolution.

Analysis and Synthesis

Background

The State 911 staff have participated in 911 Commission proceedings and discussions, and appreciate, and benefit from them and their results. The Commission threshold requirement that the CMRS Providers furnish their part of these expensive mobile E9-1-1 services wherever the PSAPs can use them has proved essential, in fact necessary, to South Carolina's implementation of CMRS Enhanced 911. The new Commission threshold requirements that the IP-enabled services Providers furnish their part of IP-enabled services E9-1-1 services will prove the same. State 911 staff experience is that there would have been far less implementation and little hope of equity or ubiquity in Wireless Enhanced 911 absent that requirement and its progeny.

The State 911 Office Replies to Comments of the Michigan ETSC and Texas PUC present its analysis and synthesis in much the same order as the NPRM paragraphs request them. However, there are several ideas for the Commission, which address a number of inquiries raised in a number of paragraphs, may not be as obvious, and may be of more importance or assistance. State 911 Office limited analysis of the unusually prominent, threshold, jurisdictional questions is relevant to, and the same for, most NPRM paragraphs. The most salient, interrelated, issues raised by Paragraphs 56, 60 and 61 of the NPRM are next, with the last, Paragraph 56, "Local, State and Federal government roles", first.

WC 04-36

The SC State 911's March 14, 2004 Ex Parte Comment in WC 04-36 requested that the Commission "1. require IP-enabled services providers to furnish Enhanced 911 to their subscribers and their subscribers 911 Centers and other emergency responders, and 2.a. provide nationally for IP-enabled

services contribution to providing PSAP 911 services to IP-enabled services 911 callers or 2.b. allow the state and local governments to do so.” In its June 05 Order in that Docket, the Commission granted the first request, and affirmed that neither federal law nor the Commission preempt state and local governments from assessing 911 surcharges against IP-enabled services subscribers and providers in their jurisdictions. Its Notice of Public Rule Making (NPRM) in that order and WC 05-196, asks for comment on expanding and refining the requirements of the Order, including the role of the state and local governments, and the Commission in implementing IP-enabled services E9-1-1, including IP-enabled services subscriber contributions to funding the 911 Centers.

The State 911 Office is very satisfied with, and appreciative of, the instant order and rules changes, with the further inquiry and possible action of the NPRM. The Commission’s complex and exhaustive analysis, pursuit of the Nation’s public safety telecommunications priority, balancing of the equities and interests, and inclusion of human, technological and financial realities facing 911 center and telecommunication industries are evident in those decisions and queries. So are procedural and substantive due process and procedure, and feasibility and effectiveness.

Also, it increasingly is apparent that the Commission values and sincerely requests comments from the perspectives of its 911 partners in industry, and state and local government. Particularly with these new and varied entrants, seeing the whole inter-related picture, or even the essential parts and their relationships, and planning accordingly must be difficult for everyone involved in implementing the quintessential IP-enabled services E9-1-1. As implementers of SC Wireline, and especially Wireless E9-1-1, as part of a public/private partnership, cooperation, consideration and trust, who have studied the Commission’s IP-enabled services dilemmas and comments thereon and in this proceeding, State 911 staff are as well placed as most to comment on these extraordinary questions. Consequently, despite confidence that the Commission has greater expertise, research, information, knowledge and perspective, and State 911 staff’s resulting deference to its determinations, State 911 staff submit their state government insights on the some of the issues raised by the NPRM in this docket, especially the roles of the state and local governments, and the Commission, including additional IP-enabled services reporting requirements and deferring decisions in reference to assisting with 911 center funding, and some responses to the NPRM which are rather obvious, even simplistic, emphases of policy priorities the Commission is already embracing.

Federal 911 IP-Enabled Services Jurisdiction

It would appear axiomatic that some United States entity(s) would have jurisdiction, authority and responsibility over the nation's communications systems' public safety aspects, and all participants therein. Congress has jurisdiction over participants in the US telephone systems. If it determines the Commission authority is lacking in any respect, it can and should more expressly authorize the necessary Commission action thereon.

The federal government has the jurisdiction, authority and responsibility to issue the rules in this order and any further rules regulating internet-enabled telephony providers and 911 services for their users. In some respects with some entities, the federal government has the only jurisdiction over these matters. It appears to us that Congress delegated the exercise of part of this jurisdiction to the Commission, which it has exercised with procedural and substantive due process and results which are correct in policy and will be in effect. It would appear that the adequate statutory jurisdictional basis for the Commission action in this order also would authorize the possible further Commission action regarding IP 911 presented in the Order, with NPRM. Moreover, if the novel and unusual natures of the new entrant internet enabled telephony, technology and business models suggest a real possibility of inadequate language in the statutory institutionalization of that jurisdiction required for some further action. State 911 staff are also are confident that this Congress, with its 911 Caucus, can and will correct it.

The further regulation contemplated in the NPRM, including assisting with IP-enabled services contribution to 911 Center funding, is within Commission's or, at least, Congressional, subject matter and in personam jurisdiction and authority, in the same ways, and for the same reasons, as the WC # 04-36 Order's threshold requirement that IP service provide E9-1-1 service. Pursuant to Title I of the Telecommunications Act, it is the Commission's responsibility to make available "a rapid, efficient, nationwide, and worldwide wire and radio communication service...for the purpose of promoting safety of life and property through the use of wire and radio communication, (47 U.S.C. sec. 151)" and to "encourage and facilitate the prompt deployment throughout the United States of a seamless, ubiquitous, and reliable end-to-end infrastructure for public safety"¹, with the United States' telecommunications system. Title II gives the Commissions responsibility

¹ Wireless Communications and Public Safety Act of 1999, Pub. L. No. 106-81, 113 Stat. 1286, § 2(b) (1999) (911 Act).

over the North American Numbering Plan, whose assignment of a ten-digit number is prerequisite to the use of the United States telecommunications system: e.g., the Public Switched Network, wireless networks and IP-enabled telephony. “Congress has also established 911 as the national emergency number to enable all citizens to reach emergency services directly and efficiently, irrespective of whether a citizen uses wireline or wireless technology when calling for help by dialing 911.”²

Jurisdiction Over IP-Enabled Services Customer Premises Equipment Sales

Under the same analysis and statutes, and the Commerce Clause, it appears that Congress, if not the Commission, should have ancillary jurisdiction over IP-enabled services customer premises equipment sales, if not manufacture.

Interrelation of Issues of Further Commission (Federal) Action and the Role of the State and Local Governments. Paragraphs 56, 60 and 61.

56. What additional steps should the Commission take toward **IP-enabled services** interconnecting services’ provision of ubiquitous and reliable E9-1-1 service.

Primary steps to implement the rules promulgated by the instant order include acquiring the contact with local and state government, and the information necessary for monitoring, enabling, and enforcing internet-enabled telephony service providers’ compliance, as addressed with Paragraph 60. Action toward implementation of true mobile IP-enabled services 911 ALI is addressed below under Para. 57.

60. The State 911 Office agrees that the **Commission should impose additional reporting obligations on IP service providers.** (See Attachment 1. Compliance Spreadsheet)

State 911 staff have some suggestions for additional reporting which may be essential, even necessary, for the state and local governments, as well as the Commission, to play their roles. State and local governments have no jurisdiction or means of acquiring the necessary information about IP service

² See 911 Act § 3 (codified at 47 U.S.C. § 251(e)).

providers serving their area and what they report to the Commission regarding their compliance actions, so that State 911 staff can assist the Commission with enforcement for the country as well as the state, and make informed governmental decisions regarding 911 Center funding.

61. Roles of the State and Local Governments in Implementing and Maintaining IP-enabled services E9-1-1 for “registered locations” by November 2005, and true ALI thereafter.

State and local governments can best help the Commission to enforce its new IP-enabled services rules if the Commission obtains the necessary initial information from the IP-enabled services providers’ Commission Compliance letters.

After the Commission and the state and local governments have reviewed IP-enabled telephony service provider compliance reports and current and possible state IP-enabled services subscriber 911 surcharge legislation, the Commission can resume more informed consideration of, and proceedings concerning, possible action to facilitate the states’ ability to collect IP-enabled services contributions to funding government 911 Centers.

Roles of Federal, State and Local Governments

Paragraph 61 requests comment on “what role states [and local governments] can and should play to help implement the E9-1-1 rules [the Commission] adopts today..... State and local governments have filled an especially important role in creating and regulating 911/E9-1-1 operations – a role states have shouldered even in the context of wireless services.³ Should state and local governments play a role similar to the roles they play in implementing the Commission’s wireless 911/E9-1-1 rules? How can the Commission and the states work together to ensure the public’s safety? Should the Commission take any action to facilitate the states’ ability to collect 911 fees from interconnected IP-enabled services providers, either directly or indirectly?

GENERAL PRINCIPLES

State 911 staff experience, focus and results in implementing SC 911 are that 911 must be a partnership of industries and governments. Thus the

³ See, e.g., *id.* at 22283-85, paras. 48-52.

State 911 Office, like the Commission, should attempt principled and effective accommodation of the legitimate interests of its other partners in 911. Government determination of, preferably, consensual solutions to these complex IP-enabled services 911 problems thus involves matrixes and calculi of principles, policies, priorities, practicalities, and technological, financial and fiduciary factors.

Consequently, South Carolina's 911 and state and local government officials agree with the FCC's consideration of legitimate interests of IP providers and users, and in the development and use of internet services generally

State Jurisdictional Limitations

The state and local governments' roles necessarily are different for IP-enabled services than for wire and wireless in that the State has jurisdiction over all wireline providers, some kind of jurisdiction over wireless providers and none over most IP-enabled services providers. Consequently it is more essential, even necessary, that the FCC promulgate any requirements and regulations necessary to the implementation of IP-enabled services E9-1-1, including gathering any information necessary to enforcing the legal requirements it imposes. Because it alone implementation cost information necessary for estimation of fair 911 contributions. It also may be the only authority which can require fair IP-enabled services contributions to 911 centers analogous to those made by wire and wireless subscribers.

Compliance with this Order

The primary state role is, as always, to cooperate with the 911 Partners, especially the local 911 centers, and the FCC, in the expeditious implementation of E9-1-1. State 911 staff models for doing so include wireline, and the ongoing wireless implementation of selective routing, ANI and ALI. . State and local governments, as well as the FCC, should establish contact and cooperation with the IP service providers as new 911 partners, as essential to the providers' requisite voluntary, good faith, expeditious compliance with FCC IP-enabled services 911 rules. Consequently, State 911 staff ask that the FCC establish the IP-enabled services Registry the Michigan ETSC requests and require each IP-enabled services provider to contact the PSAPs and the State 911 contact in any area in which it provides services.

In Paragraph 51. the FCC states its "commitment to ensuring compliance with the rules [the FCC] adopts in this order", and that, "the

requirements set forth in this order will be subject to swift enforcement action by the Commission, including substantial proposed forfeitures and, in appropriate cases, cease and desist orders and proceedings to revoke any Commission licenses held by the interconnected IP-enabled services provider.” State 911 staff agree with the Commission that routing 911 calls to the right 911 center with ANI and ALI is by far the first, primary and greatest public purpose to be served in this field, and require the FCC’s properly short timetable. State 911 staff count on this commitment and seek to find ways to assist in the implementation and enforcement of the Commission’s new IP-enabled services 911 rules, and those State 911 staff expect to follow from this NPRM. Due to state jurisdictional shortfalls, only the FCC can require the information from the IP-enabled services providers necessary to any enforcement support from the state and local governments. Consequently, State 911 staff request the FCC compliance letter include **information about the IP-enabled services operations and contributions to 911 centers in the states.**

The Primary Roles the Local and State Governments could play include:

1. Continuing to fund and improve the local government 911 centers.
2. PSAPs cooperating with the Local Exchange Carrier (LEC) Selective Router, database, and IP-Enabled service providers in connecting IP-Enabled service users to the 911 Network and the PSAPs, including testing.
3. PSAP and state assisting in implementing the Commission’s IP-Enabled service 911 rules by verifying IP-Enabled service providers’ Commission compliance letter information.
4. State development of an information and form package for the State and/or SC NENA State 911 web pages, and consideration of Public Service Announcements of one kind or another. State 911 staff expect to lean heavily on NENA in this matter, as State 911 staff have in the past.
5. State ascertaining and contacting IP-Enabled service providers, with Commission assistance.
6. State facilitation of meetings between IP-Enabled service providers and PSAPs in jurisdictions they will serve.
7. State participation in Commission, NENA and other partner development and implementation of protocols, policy and procedure, etc. for IP-Enabled service providers’ provision of E9-1-1.
8. State offering good offices upon request if there are problems between IP-Enabled service providers and database providers or LECs providing 911 selective router services regarding IP-Enabled service access to the state’s selective routers.

9. State facilitating conference(s) for PSAPs, the selective LECs and the IP-Enabled service providers.
10. 8/17/2005 State development of new draft amendments to the South Carolina Public Safety Communications Center (911) Act, SC Code Section 23-47-10, et seq., re IP-Enabled service E9-1-1 users fee, or other, methods for funding of 911 Centers

911 Center Funding

Commission 911 Center Funding Assistance Issues

Although the FCC appears to be progressing appropriately on IP-enabled services E9-1-1 issues, 911 Center funding issues remain and may prove to be the most problematical aspects of bringing IP-enabled services users into the 911 systems.

The Order clearly establishes that the federal government does not preempt the states' authority to collect 911 Center contributions from IP-enabled services users, and that the FCC has recognized, an implicitly supports, the states' ability to do so. That and Commission ordering requisite IP-enabled services Provider information are all the state and local governments can properly ask at this time. However, it appears from the limited information available at this point in IP-enabled services' development that effective, ubiquitous, equitable collection of IP-enabled services users' financial contribution to the 911 Centers may require further FCC assistance, because the states and local governments lack jurisdiction over a large proportion of the "unlimited number of entities that may engage in the provision of interconnected IP-enabled services" (Paragraph 43) in their areas.

Commission Assistance Obtaining IP Enabled Service Provider Information

The federal, state and local governments lack the requisite information about near, prospective increases in 911 Center Costs deriving from adding IP-enabled services "registered", and certainly the year (s) away, inchoate true mobile IP-enabled services E9-1-1; and those from the next generation telecommunications (NENA's I3, IP-enabled services PBX switch platforms, etc.), and IP-enabled services 911 costs, expenditures and contributions to 911 Centers, to determine what would be reasonably fair and equitable IP-enabled services user contributions or surcharges. Furthermore, the FCC compliance letter information State 911 staff request above is the minimal amount required from IP-enabled services providers to devise a fair, uniform, feasible methodology, authority and system for the IP-enabled

services subscribers to contribute their fair share to the 911 Centers trying to draft, pass or implement surcharge collection legislation without adequate information and fairness may well fail and generate animosity or antagonism at a time when IP-enabled services cooperation and partnership is necessary.

Until the nation's governments have such information about how IP Enabled providers have done in regard to implementing their pieces of the network and what that has cost them and their subscribers, and until State 911 staff can make reasonable estimates of IP-enabled services' impact on PSAPs' costs and their voluntary contributions to local government 911, the State 911 Office asks the FCC to delay deciding its role regarding IP-enabled services 911 surcharges, which have complicated and, possibly, controversial aspects. Once the nation's governments have more of the pertinent information, in six months or a year or so, they can better determine fair amounts and methodologies, and whether these require further assistance from the FCC, or Congressional authorization of same, to collect any 911 surcharge in a uniform and equitable manner, because it has the only jurisdiction over many IP-enabled services providers of service in the states.

Question of Further Commission Assistance, Unripe and Premature

Until the nation's governments have more of this pertinent information, the question of further federal assistance for 911 Center funding is unripe and deciding it would be premature.

Furthermore, in terms of Enhanced 911 service for internet-enabled callers in South Carolina, "sufficient unto the day is the evil (travail) thereof." All available attention, efforts and resources should be dedicated to implementing registered IP-enabled services E9-1-1 now and true mobile E9-1-1 presently. All 911 partners and potential partners have enough work and expense in the next few months implementing, cooperating on, and monitoring compliance with, the recent FCC IP-enabled services E9-1-1 Rules, and joining, in that way, in the public/private E9-1-1 partnership. For the next months, the FCC, IP-enabled services Providers, and the PSAPs, State and 911 Network LECs of South Carolina should concentrate on immediate IP-enabled services provider connection of SC internet enabled telephony subscribers to the 911 Network, for selective routing to the correct PSAP, with ANI and "registered locations" ALI.

At the same time, those partners need to **concentrate additional** intellectual and financial resources on developing the partnership and solutions regarding the development, choice and **implementation of the new, true mobile IP-enabled services selective routing and ALI**. The providers will have to pay for the substantial cost of the immediate

Automatic “Registered” Location, and the coming true mobile ALI. Most likely, their subscribers will pay a large, but unknown, amount over time—some are paying \$1.50 a month to their provider currently.

All of this requires voluntary, good faith, compliance and cooperation from the IP-enabled services providers. Premature, uninformed, perhaps discriminatory attempts to widen regulation to new, major, jurisdictional and precedential fields such as economic or 911 surcharge regulation would probably be a distraction. On the other hand, delaying resolution of premature, unripe, unsettled and unsettling funding regulation issues while the FCC requires expeditious action and the necessary reporting from the IP-enabled services providers toward the immediate, paramount end of E9-1-1 service for IP-enabled services 911 callers, would facilitate IP-enabled services compliance with the new rules, and timely, proper resolution of the complex, novel funding issues.

Additional Reasons for the Commission to Require Necessary Provider Information and “Forbear” from Further Action to Facilitate 911 Center Funding At Present

Preliminary Analysis of Whether IP-enabled services Users Should Contribute to 911 Center Costs, Generally

Paragraph 7 of the Order recognizes that, “...absent appropriate action by, and funding for, states and localities, there can be no effective 911 service. Responsibility for establishing and designating PSAPs or appropriate default answering points, purchasing customer premises equipment (CPE), retaining and training PSAP personnel, purchasing 911 network services, and implementing a cost recovery mechanism to fund all of the foregoing, among other things, falls squarely on the shoulders of states and localities.”

As South Carolinians switch from wire to wireless, local government 911 user fee revenue declines. This will happen as they switch from wire to IP-enabled services, as well. At the same time, as IP-enabled services include the providers’ portion of E9-1-1 services, the PSAPs will bear costs for providing their portion of IP-enabled services E9-1-1. .

The Order clarifies that the field is open to the states to collect financial support for their 911 PSAP services from their IP-enabled services 911 subscribers/users. Otherwise, the wireless and wireline subscribers and local taxpayers will bear the IP-enabled services subscribers’ share of the 911

Centers' financial burdens, or all telecommunications users will bear the impact of any degradation of funding and 911 services.

State 911 staff adopted the Commission's Intergovernmental Advisory Committee's (IAC's) comment in WC 04-36 that internet-enabled telephony subscribers should contribute to funding government 911 services; that "voluntary" contributions are neither workable, ubiquitous nor equitable, and that,

In the IAC's view, there are several aspects of 9-1-1 service that may require [FCC] regulatory leadership: **(1) funding (access points) integrity of the 9-1-1 system;** (2) technology planning and deployment (not a patchwork, but a systemic plan); and (3) consumer expectations (public at-large, various communities, deaf, hard-of-hearing, elderly, etc).

Likewise, NENA's position in its WC 04-36 Comments has been that,

The changes predictable (and unpredictable) in the evolution of IP-enabled services will not come free. **Public safety authorities cannot be left for long in the position of reliance on conventional service surcharges that may actually shrink as consumers give up those services.** Nor can the federal government be viewed as the sole answer to these financial requirements. Although NENA supports the need for national direction from the FCC, just as NENA supports – in pending legislation – cabinet-level attention to 9-1-1 issues, state and local governments may still require the authority to consider, and should not be preempted from considering, equitable distribution of financial obligations among communication and information service providers offering 9-1-1 capability.

As a **policy matter**, NENA believes that **any domestic service provider originating 9-1-1 traffic should be subject to 9-1-1 requirements and obligations, including financial support, irrespective of the source of the call.** NENA maintains that the responsibility of using and properly supporting 9-1-1 as an originating service to customers should apply equitably among providers that use it in similar ways.

Paragraph 52's recognition of the states' rights to legislate 911 surcharges for IP-enabled services users contributions to 911 Centers, indicates **FCC acceptance of the policy that the IP-enabled services users should contribute to the expenses of operating the 911 Centers**, as well as whatever contribution to their providers E9-1-1 service costs it bills them; e.g. \$1.50 a month for "911".

Unknown 911 Centers' Costs for Additional IP-Enabled Services Subscriber 911 Traffic Necessary to Determine Fair IP-Enabled Services Contributions

Additional PSAP Costs from IP-enabled Services E9-1-1 “Registered” and from True Mobile E9-1-1

Paragraph 52 concludes that “the record indicates that the network components that have been developed to make wireless E9-1-1 possible also can be used for IP-enabled services E9-1-1, which should make the implementation process simpler and far less expensive than the initial upgrades necessary for wireless E9-1-1.⁴ For that reason, [the FCC] does not expect the rules [the FCC] adopts today to impose substantial implementation costs on PSAPs.⁵ In short, [the FCC] believes that the rules [the FCC] adopts today will neither contribute to the diminishment of 911 funding nor require a substantial increase in 911 spending by state and local jurisdiction.

As Paragraph 18 points out, implementing and maintaining Enhanced 911 “...requires cooperative efforts from wireless and wireline providers, manufacturers, third-party providers, and state and local governments...” It

⁴ See *supra* para. **Error! Reference source not found.** & note **Error! Bookmark not defined.** (explaining that wireless E9-1-1 requires that PSAPs be able to receive and process pseudo-ANI, and that interconnected IP-enabled services providers may utilize pseudo-ANI to deliver non-traditional location information to the PSAP). For this reason, State 911 staff do not require that a cost recovery mechanism be in place for PSAPs before a IP-enabled services provider must comply with the E9-1-1 obligations State 911 staff establish today. In this respect State 911 staff deviate from the wireless E9-1-1 scheme, under which a PSAP must have a means of covering its costs of receiving and utilizing the data elements associated with wireless E9-1-1 calls before a wireless carrier is required to provide E9-1-1 pursuant to that PSAP’s request. See 47 C.F.R. § 20.18(j); see also *E9-1-1 Second Memorandum Opinion and Order*, 14 Rcd at 20860, para. 23. There is no need to specify a cost recovery mechanism for interconnected IP-enabled services providers because their rates are not regulated, so they are fully able to recover their E9-1-1 costs by raising their rates. Cf. *E9-1-1 Second Memorandum Opinion and Order*, 14 FCC Rcd at 20854, para. 7 (eliminating a cost recovery mechanism requirement for wireless carriers’ costs because wireless carriers’ rates were unregulated, giving them full flexibility to recover their costs without a mandatory mechanism). To the extent that it becomes a concern, State 911 staff believe that the demarcation point that the Commission established for wireless E9-1-1 cost allocation would be equally appropriate for VoIP. See *King County Letter; King County Reconsideration Order*, 17 FCC Rcd 14789.

⁵ In fact, APCO’s concerns about PSAP costs focused on the expense of responding to stopgap solutions, such as routing VoIP 911 calls to PSAPs’ administrative numbers, and indicated a preference for a uniform VoIP E9-1-1 approach such as the one State 911 staff adopt today. See APCO Apr. 15, 2005 *Ex Parte* Letter at 2 (stating that VoIP providers should be required to provide their customers with “full access to existing [E9-1-1] capability” rather than being permitted to route their calls to PSAPs’ administrative numbers because PSAPs “lack the resources to be constantly upgrading and modifying their operations to be compatible with the latest technological fads”).

held in its E9-1-1 Second Memorandum and Order that “the demarcation for Wireless Enhanced is the input to the selective router. Thus, a wireless carrier is responsible for all hardware and software components and functionalities that precede the selective router, including the trunk from the carrier’s Mobile Switching Center to the selective router, and the particular databases, interface devices, and trunks lines that may be needed to deliver E9-1-1 data to the PSAP.⁶ The PSAP is responsible for any costs associated with the Selective Router itself, any required upgrades to the Selective Router, the ALI Database and any upgrades thereto, the SRDB and any upgrades thereto, the MSAG, the trunk from the Selective Router to the PSAP, and the PSAP CPE.⁷

Paragraph 36 of the Order is replete with industry examples of mobile IP technical solutions. Paragraph 37 requires provision of users ALI through selective routers “and the ALI Database” associated with them. Paragraph 38 states the FCC’s expectation that these arrangements for fixed base IP E9-1-1, “would include all the elements necessary for telecommunications carriers to provide 911/E9-1-1 solutions that are consistent with the requirements of this Order, including NENA’s I2 or wireless E9-1-1-like solutions.” Paragraph 39 concludes with one company’s offerings which exemplify the IP-enabled services 911 ALI technical and commercial situation. .⁸ SBC has offered to negotiate commercial agreements with IP-enabled service providers for direct connection to Selective Routers and ALI databases, comparable to the E9-1-1 access that SBC provides to competitive LECs.⁹ SBC further has established a new commercial offering that “will enable providers to offer customers who use their service at a fixed location, such as their home” full E9-1-1 service and has stated that it is “willing to

⁶ See King County Reconsideration Order, 17 FCC Rcd at 14790-91, para 4

⁷ *See id.*

⁸ *See* BellSouth Apr. 19, 2005 *Ex Parte* Letter at 1; BellSouth May 12, 2005 *Ex Parte* Letter at 3-4 (stating that “[u]sing [BellSouth’s CMRS 911] offering as the baseline, BellSouth is offering equivalent 9-1-1 infrastructure network access to VoIP providers”); Letter from Bennett L. Ross, General Counsel-D.C., BellSouth D.C., Inc. to Marlene H. Dortch, Secretary, FCC, WC Docket No. 04-36 at 1 (filed May 16, 2005) (BellSouth May 16, 2005 *Ex Parte* Letter) (stating that BellSouth’s offering to interconnected VoIP providers “provides the same access as that which BellSouth currently provides to CMRS carriers”).

⁹ *See* Letter from Christopher T. Rice, Executive Vice President, Network Planning & Engineering, SBC, to Jeffrey A. Citron, Chairman & CEO, Vonage (dated Apr. 18, 2005) (SBC/Vonage Apr. 18, 2005 Letter) *in* Letter from James K. Smith, Executive Director – Federal Regulatory, SBC Services, Inc. to Marlene H. Dortch, Secretary, FCC, WC Docket No. 04-36 at 10 (SBC Apr. 26, 2005 *Ex Parte* Letter) (explaining that SBC currently permits VoIP providers to purchase a tariffed interconnection service called TIPToP and offers access to its Selective Routers and 911 databases pursuant to an optional ancillary agreement).

develop a wireless-like capability for IP-enabled services providers” pending receipt of necessary technical information.¹⁰

Paragraph 52 concludes “that the requirements [the FCC] establishes today will significantly expand and improve interconnected IP-enabled 911 service **while substantially reducing the threat to 911 funding that some IP-enabled services currently pose.**”¹¹

Variable Accuracy and Reliability of Current Information on IP-Enabled Services Related 911 Center Costs

It thus appears that the best estimates are that the future, additional costs directly attributable to the IP-enabled services users E9-1-1 entry to the 911 networks will not be substantial. While this estimate is predictable, reasonable and reliable for the immediate “Registered” IP-enabled services implementation, it does not appear reliable, valid prediction for the much more inchoate True Mobile E9-1-1 will be available until the providers submit their plans for implementing it, and/or the FCC requires delivery of the E9-1-1 services to the selective routers which requires no changes at the selective router or 911 Center.

Meaningful estimates of what proportion of the 911 Centers’ costs derive from providing IP-enabled service subscribers E9-1-1 service, to the extent possible, would be relevant to proper governmental decision making, but probably are unreliable, if not unavailable at this time. For present purposes, nothing more precise than estimates of the changing proportion of IP-enabled services 911 calls are available. The FCC’s best estimate of the coming proportional E 9-1-1 impact is Paragraph 10 of the Order’s quote of “Intrado’s estimate that, while the number of residential 911 calls placed over IP-enabled services will account for less than two percent of all residential

¹⁰ See Letter from James K. Smith, Executive Director - Federal Regulatory, SBC Services, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 04-36 at 1, Attach. at 1 (filed May 12, 2004) (SBC May 12, 2005 *Ex Parte* Letter).

¹¹ Some commenters have expressed concern about the effect of increased use of VoIP services on 911 funding. See, e.g., APCO Comments at 9; BellSouth Comments at 52; BRETSA Comments at 4, 6; CUB Comments at 27; FERUP Comments at 15; Global Crossing Comments at 15; King Country Comments at 3-5; Missouri Commission Comments at 4; NARUC Comments at 8; NASUCA Comments at 55; NCL Comments at 5; NENA Comments at 8; Spokane County Comments at 1; Public Utility Commission of Texas Coalition of Cities Comments at 3-4; TCSEC Comments at 3-5; AT&T Reply at 22; Intrado Reply at 2-3; NASUCA Reply at 50-51; New Jersey Ratepayer Advocate Reply at 24-25.

911 calls for the period 2004-2006, the number of residential IP-enabled services 911 calls will rise from 370,000 in 2004 to 3.5 million in 2006.”¹²

Future Impact of IP-enabled Services on 911 Center Costs

Some more expert than State 911 staff have bundled or linked future E9-1-1 PSAP costs with transitioning to IP-enabled PBX's or other “switching”, with the concept that the wireline like and wireless like solutions are temporary or “stove pipe”, and somehow inadequate over time. This does not appear correct to us, but it is another reason to delay determinations regarding the immediacy and amount of IP-enabled services subscriber 911 Center contributions. The future costs of transition to IP-enabled services platform 911 Center CPE (NENA's I3) are relevant to the 911 Centers' financial needs, so they would be relevant to IP-enabled services 911 Center surcharges to the same extent they are relevant to wireline and wireless surcharges.

IP-Enabled Services Provider Contributions to 911 Center Costs Presently

Paragraph 52 addresses the IP-enabled services user 911 Center contribution further, accepting “that while **some state laws today may already require 911 funding contributions from providers of interconnected IP-enabled services**, interconnected IP-enabled services providers may not be covered by existing state 911 funding mechanisms in other states.¹³ But even in the latter circumstance, the record does not indicate that states are receiving no 911 funding contributions from interconnected IP-enabled services providers. On the contrary, the record indicates that many interconnected IP-enabled services providers currently are contributing to state 911 funding mechanisms.¹⁴

¹² See Intrado Inc., *VoIP 9-1-1 Frequently Asked Questions* (visited Apr. 20, 2005) <<http://www.intrado.com/main/home/news/features/voipfaq.jsp>>.

¹³ See, e.g., Letter from Robert M. Gurss, Director of Legal and Government Affairs, APCO, to Marlene Dortch, Secretary, FCC, WC Docket No. 04-36, Attach. (filed May 10, 2005) (describing state funding mechanisms). States may be in the process of modifying their 911 funding requirements to cover interconnected VoIP providers. See, e.g., H.F. No. 2103, 84th Leg. Sess., Reg. Sess. (Minn. 2005) (proposing to expand applicability of state 911/E9-1-1 law beyond telecommunications service providers to include “other entit[ies] determined by the commissioner to be capable of providing effective and efficient components of the 911 system”). State 911 staff use the term “state” for purposes of this discussion, although State 911 staff recognize that in many areas, local authorities are responsible for 911 funding.

¹⁴ According to NENA and the VON Coalition, 75% of signatories to the VON/NENA Agreement currently are paying into state and local 911 funds. See VON/NENA Jan. 2005 White Paper at 10.

The FCC record of “many” **IP-enabled services providers voluntary contribution to state 911 funding mechanisms** appears to be statements from some providers that they do so. The best State 911 staff can guess is that a dozen or so IP-enabled services providers comply to some extent with their agreement to voluntarily pay the local government 911 surcharge for each of their customers in each such 911 jurisdiction. SC state and local 911 officials have been informed of one IP-enabled services provider that is doing so. Nor is there a way of knowing all the others who may be providing IP-enabled services to South Carolinian residents, the extent of their voluntary payment of local wireline 911 surcharges, or whether any such would continue without the possibility of mandatory (surcharge) payments.

The state and local governments lack of the necessary jurisdiction and means of ascertaining the extent of this contribution suggests that the FCC compliance reporting (Para 60., NPRM) include details of how much and to which entities such contributions are made, in part so that they can be taken into account in reaching fair government decisions about IP-enabled services 911 surcharging. Indeed, this information is relevant to whether to impose any IP-enabled services 911 surcharges at all.

IP-enabled services voluntary wireline surcharge payments also are relevant to whether to pass IP-enabled services 911 surcharges because minimal contributions would incline legislatures towards surcharges, and substantial contributions would incline them against such a new tax, whether on users or providers, as long as such continued. SC state and local governments, as well as IP-enabled services providers and users, would prefer substantial voluntary IP-enabled services contributions to local governments to the statutory solution the IP-enabled services providers would prefer a state surcharge to multiple county surcharges, as is analyzed below.

South Carolina State IP-Enabled Services 911 Surcharge Legislation Factors Related to Commission 911 Center Funding Consideration.

South Carolina Preferences

South Carolina governments prefer:

1. Not to pass any new users’ fees, surcharges, or taxes on individuals or businesses of any nature;
2. Jurisdictional, procedural and substantive fairness, correctness, and due process;
3. Consultation with parties affected;

4. That any new such revenue measures be a. by, and b. directly for, local governments, because they provide the 911 Centers and South Carolina is a home-rule state, and;
5. There be as little bureaucracy and state government involvement as possible, which is also a lesson of South Carolina's state wireless 911-surcharge distribution to local governments.

IP-Enabled Services Preferences.

The IP-enabled services providers, however, would prefer a statewide surcharge in any legislative process concerning statutory surcharges, as opposed to paying 50 different surcharges to 50 different local jurisdictions. Consequently, as long as substantial, voluntary IP-enabled services payment of local government 911 users' fees continues, it probably is preferable to any attempt to legislate a IP-enabled services users' fee or tax. Any unfairness in a voluntary program versus a statutory surcharge would be to the IP-enabled services providers who do pay voluntarily vis-à-vis those who don't, and those volunteers prefer any such inequity to a statutory surcharge.

Distribution Problems with State Surcharges

Furthermore, any state surcharge would entail distribution problems as well as bureaucracy. Such state 911 surcharge revenue would be distributed to the 50 911 Center local government jurisdictions by proportion of population, IP-enabled services subscribers paying the surcharge, IP-enabled services 911 calls received, or some combination. It is unclear whether the requisite information on the subscriber's residence would be available from non-resident providers without FCC assistance; or whether the IP-enabled services registered E9-1-1 calls will be readily distinguishable from wireline calls or the true mobile IP-enabled services calls will be distinguishable from wireless calls.

No Immunity

Another consideration in determining IP-enabled services contribution to 911 Centers vis-à-vis wireline and wireless is that, IP-enabled services providers, unlike wireline and wireless providers, have no immunity from liability for their 911 negligent acts or omissions. Paragraph 22 of this Order states that the FCC declines to exempt providers of interconnected IP-enabled services from liability under state law related to their E9-1-1 services without congressional action. If the state were to impose a surcharge, fairness and parity with wire and wireless providers suggests amending state statutes to give IP-enabled services providers analogous immunity. However,

query whether enough information is available to justify such immunity grants.

Disparity in Costs Born Directly

Another equitable consideration in South Carolina is that wireline providers bear none of the costs of 911 service or centers and wireline subscribers contribute nothing but wireline surcharges to the PSAP cost; wireless subscribers pay surcharges for both provider and PSAP 911 costs, and often pay “self-recovery” fees to their providers; IP-enabled services providers and/or their users pay all of the (non-911 Center) IP-enabled services E9-1-1 expenses up to the selective router, without 911 surcharge or government reimbursement of any kind.

The Unknown Importance of FCC Facilitation of the State and Local Governments’ Ability to Collect IP-enabled services 911 Fees

The current shortfall of the information necessary for proper governmental analysis at the state, and even, federal level makes it impossible to properly analyze and determine the issues necessary to calculate a fair surcharge for IP-enabled services users or a proper, effective, ubiquitous, egalitarian manner of collecting those surcharges.

For the same information shortfall and other reasons, it is too early to determine whether, to what degree, and in what ways the FCC should assist state and local governments in collecting a fair contribution to 911 Centers from subscribers or providers. This is one reason the FCC should continue public rulemaking on this issue at least until three months after the IP-enabled services providers submit their compliance letters under this Order. Forbearance from federal regulation of IP-enabled services 911 Center contribution for some time may also encourage IP-enabled services compliance with the Order, which is by far the most immediate and important aspect of 911 for IP-enabled services users. There are other aspects of the FCC funding assistance issue which are unsettled, inchoate and unripe for determination, which would, therefore, be premature.

Insufficient Information on Adequacy of Possible Jurisdictional Solutions

Jurisdictional Solution #1. The One Solution in the Order to the States' Lack of Jurisdiction over many IP-enabled Services Providers: State Law Requires Selective Router LEC's to Collect 911 fees/taxes from IP-enabled services Providers of Service in the State

State 911 staff appreciates this FCC approval of state legislation requiring LEC collection of surcharges from the IP-enabled services provider as part of the newly requisite IP-enabled services selective router connection/transaction required for IP-enabled services E9-1-1 service. However, the proffered jurisdictional solution, which does not require FCC assistance, of mandatory selective router collection of IP-enabled services user state 911 taxes does not appear viable to us for South Carolina, or, thus, for many other states.

Paragraph 52 discusses a funding method which appears to address the states' problems with personal jurisdiction over a large, if undeterminable, number of the IP-enabled services providers providing services in their areas....

[S]tates have the option of **collecting 911 charges from wholesale providers with whom interconnected IP-enabled services providers contract to provide E9-1-1 service**, rather than assessing those charges on the interconnected IP-enabled services providers directly. For example, [the FCC] has explained that interconnected IP-enabled services providers often enlist a competitive LEC partner in order to obtain interconnection to the Wireline E9-1-1 Network, and [the FCC] believes that as a result of this Order, many more will do so. In that situation, states may impose 911 funding obligations on the competitive LEC partners of interconnected IP-enabled services providers, regardless of whether the IP-enabled services providers themselves are under any obligation to contribute.¹⁵ Similarly, states may be able to impose funding obligations on systems service providers, such as incumbent LECs, that provide direct interconnection to interconnected IP-enabled services providers. [The FCC] believes that the ability to assess 911 funds on interconnected IP-enabled services providers indirectly should narrow any gap in 911 funding attributable to consumers switching to interconnected IP-enabled service.

Those 911 partnerships and legislatures, such as South Carolina's, which seek, and often insist upon, some degree of consensus among the

¹⁵ Because 911 contribution obligations are typically assessed on a per-line basis, states may need to explore other means of collecting an appropriate amount from competitive LECs on behalf of their interconnected VoIP partners, such as a per-subscriber basis. Similarly, if an interconnected VoIP provider interconnects directly with a systems service provider or PSAP, states may need to explore collecting amounts from these entities, which could pass the charges through to the interconnected VoIP provider.

stakeholders in an issue, probably will require the State's selective router LECs cooperation in passing state legislation giving them such unprecedented legal responsibility. The South Carolina 911 Act, 23-47-10, et seq. requires LEC's and CLECs to collect their own subscribers' wireline 911 local government surcharges. Without statutory provision, some of the big LECs do collect surcharges for others. South Carolina's current legislation does provide that only the users are ultimately responsible for paying their users' fees. In any case, the three LEC 911 "Network" selective router providers, Bell South, Sprint and Verizon, may be willing to **voluntarily** receive and forward IP-enabled services 911 users' fees from the IP-enabled services providers connecting to their selective routers.

Fairly requiring them to do so would require additional immunity from liability for, or arising out of, such collections. Has anyone adequately explored the repercussions of such an unprecedented manner, means, and involvement of a third private party, to collect a state or local tax? It may be subject to a range of possible, unforeseeable, unintended, problematical consequences, and State 911 staff expect a number of other problems passing/implementing legislation requiring third party LECs to collect surcharges from IP-enabled services providers (some of whom will be sibling companies), which actually are assessed against IP-enabled services users (at least they have been with wireline and wireless telephony).

State 911 staff also fear this approach may endanger small and/or out-of-state IP-enabled services providers all important connection with the 911 Network with the disincentive of the IP-enabled services providers subjecting themselves to 911 Center funding costs in addition to their own (e.g., the LEC, selective router, database, transmission and other costs of supplying E9-1-1 voice and data to the selective routers) upon the connection with the selective router the FCC requires.

It also appears that such a legislated solution would have to be amended some unknowable time in the future if and when selective routers are displaced by technical 911 communications transformations, including 911 Center Customer Premises Equipment and software, such as NENA's E3, Future Path or "Next Generation 911 Center".

Most intangibly, but perhaps importantly, the probable government wrangling with the selective router LECs and IP-enabled services providers about this circuitous solution with its disincentive to selective router connection, and entanglement with LEC intermediaries in tax collection likely would **interfere with the development of 911 partnership relations with the IP-enabled services providers** in several ways. The "coordination...and

collaboration” necessary to IP-enabled services E9-1-1 will come, as with wireless E9-1-1, now that the FCC requires these new telecommunications entrants to provide 911. How much, how soon, how pervasively, how smoothly, and how effectively the new entrants’ necessary collaboration, cooperation and partnership develop, and with how much dedication and good faith, may depend to a large extent on the **degree to which the new entrants perceive fair treatment** from their new federal, state and local government partners in the endeavor.

Users’ Fee Versus Business Tax

The South Carolina legislature is highly adverse to passing any new taxes, and only somewhat less so regarding users’ fees. Would charging IP-enabled services providers a fee through the LEC selective routers be a users’ fee, even if based on the number of subscribers? Wouldn’t it be a business tax instead, with less chance of passage?

Inadequate solution. The 2004 Draft of South Carolina Telecommunications (IP-enabled services) 911 Surcharge Amendments

In August of 2004, the South Carolina ORS (**Office of Research and Statistics**) circulated a draft of amendments to the SC 911 Act, 23-47-10, et seq. which included provisions for a Telecommunications 911 Users fee. It required all SC North American Numbering Plan (NANP) phone number users to one or more of three users’ fees. The first 911 fee the legislature imposed is a state regulated, local government surcharge on wireline subscribers, which the statute requires the wireline providers to collect from subscribers and remit to local government. In 1998, SC passed a state CMRS surcharge on all wireless devices with a SC NANP number and capable of making a 911 call. The statute and regulation require the Advisory Committee and the ORS to set the next year’s surcharge at the average of all wireline surcharges paid in the previous year (from \$0.55 to this year’s \$0.60). The ORS and State Treasurer distribute 58.2% of that fund’s revenue to reimburse the Public Safety Answering Point (PSAP or 911 Centers) and Commercial Mobile Radio Service provider [CMRS, wireless service provider (WSP), wsp, or wireless] costs of compliance with the FCC requirements of Docket #94-102 regarding Wireless E9-1-1, and 39.8% to PSAPs in proportion to their CMRS 911 call volume for 911 center operations.

All other providers of telephony with SC NANP numbers would collect a 911 fee in the same amount as the wireless and remit it to the State, which in turn would distribute 98% of the revenue to the user’s local government. If

that information remained unavailable the state would distribute proportional to local government jurisdictions' populations.

Knowledgeable, authoritative sources informed State 911 Office to give up because the FCC may have preempted such regulation, and that it wouldn't work because the State of South Carolina doesn't have jurisdiction over non-resident IP-enabled services service providers. The FCC has made it clear that it has not preempted this kind of legislation, but the jurisdictional problem remains.

Jurisdictional Solution 2. Users Pay Directly to State or Local Government

Whereas South Carolina will lack jurisdiction over many IP-enabled services providers, it has jurisdiction over their subscribers residing in this state. Consequentially a solution to the jurisdictional problem would be to require the SC users to pay the local government or SC IP-enabled services 911 surcharge in a manner similar to SC's requirement of residents paying internet sales/use, tax with their state income taxes. The later has not worked well at all, perhaps in part because few would keep up with their internet purchases and the state government could not. However, the amount of IP-enabled services users' fee would be set, and the providers or FCC could give the state the identity, address and status of its resident IP-enabled services subscribers. A hybrid solution would be to require provider collection of all such surcharges and only require users to pay the local government or state the surcharge annually, if their providers are not remitting their subscribers' users fees. The statute could authorize LEC selective routers to accept the IP-enabled services 911 users' fees from the providers, but, again, only the users are ultimately responsible for paying their users' fees.

Jurisdictional Solutions 3a, and 3b. FCC Requires IP-Enabled Services Providers to Collect.

- a. The FCC or Congress could require all providers of IP-enabled services in the United States to comply with any local or state 911 Center funding laws.
- b. The FCC or Congress could institute a nationwide users' fee statutory scheme requiring providers of IP-enabled services, or of all, NANP telephony service capable of calling 911 to collect and properly remit from their subscribers either a local, state or federal 911 user fee.

The jurisdictional “solutions” illustrate how premature it would be for the Commission to determine the unripe questions concerning its assistance for 911 Center financing beyond information gathering. As it is premature for South Carolina to attempt to legislate the nature, amount and manner of any IP-enabled services 911 surcharge, it is premature and unfair to ask the Commission to require payment of such, unknown state or local surcharges, or an alternative, national 911 surcharge.

As the Order clarifies that the Commission does not preempt state legislation requiring IP-enabled services contributions to 911 Centers, it can and should delay further, premature, decisions on such funding. Government should concentrate on guiding, monitoring and regulating IP-enabled services provider implementation of registered and true mobile E-9-1-1, which are ripe for decision and action, while obtaining the requisite information on their implementation efforts and for IP-enabled services 911 center funding analysis and decision, and tabling the issues of whether either a federal surcharge or federal requirements concerning state and local 911 surcharges are necessary or proper.

That way the IP-enabled services providers which need to join the 911 partnership can dedicate their and their users’ personnel and other resources to immediate implementation of physically fixed and static/”registered” E9-1-1 and the coming, unknown expenses of mobile IP-enabled services 911 ALI, and provide their part of the information necessary to the governments’ determination of fair and feasible IP-enabled services user contributions to 911 Centers’ operations. Such 911 Center funding forbearance, and allowing more just government decisions regarding funding regulation based in part on evidence (largely that they provide the Commission with their “compliance letters”) should foster IP-enabled services’ good faith compliance with the recent E9-1-1 rules.

Remaining NPRM Paragraphs Requesting Comments:

- 57.State 911 staff concludes that there is more the Commission can and should do to advance mobile IP E9-1-1, including a method and a timetable for determining users’ locations without user assistance.**

Specifically, State 911 staff strongly support **the Commission prohibiting the sale of IP Connecting Customer Premises Equipment (CPE) Terminal Adapters without location capability in the U.S. after 6/1/06.** As best State 911 staff can determine such a prohibition would be reasonable, feasible, and as effective as any further Commission measure. It is clear from experience implementing wireless 911 ALI that such a breakthrough requirement would accomplish more than anything else to speed more ubiquitous implementation of true mobile IP 911 ALI, by years in many cases. State 911 staff believe the Commission's Title I authority to develop the public safety aspects of telecommunications is sufficient to give them the necessary ancillary subject matter and personal jurisdiction over the vendors. Congress has plenary public safety, communications and commerce clause authority and can delegate to the Commission further, as necessary.

The Order is replete with industry assertions and examples of mobile IP ALI technical solutions which are currently available. Query whether the **GPS chip and satellite based solutions are not the only solutions which are truly feasible for the users and the 911 Centers throughout the country, as well as for the service providers.** If the Commission so determines, it should require such solutions as a means to simplify and expedite mobile ALI implementation and prevent the delay further investigation and experimentation might otherwise entail.

58. State 911 staff commend to the Commission's evident thorough and astute investigation and determination whether to **extend the scope of its IP E9-1-1 requirements beyond *Public Switched Telephone Network (PSTN)* interconnected providers, and if so, to what degree or with what timetable.**

State 911 staff are without sufficient information to comment on the technical and financial feasibility of other IP voice message connection to the 911 Networks or the users' 911 service expectations. It is clear to us, and the Order indicates to the Commission, that the requirement of Enhanced 911 connection should be extended to any telecommunications delivery which could deliver 911 calls and for which there are feasible technological solutions which are not cost prohibitive.

59. State 911 staff agree that, if feasible, **user location updates** should be immediate, but lack the information and expertise to comment on its **feasibility**, or on **the proper and feasible time standards for the new location registration updates required by the Order if immediacy is infeasible.**

As all of South Carolina is covered by selective routers, State 911 staff have no standing or insights **regarding areas without selective routers. As these areas are not yet included**, however, South Carolinians, like all callers in the US, have an interest in the ubiquity of 911 availability, with as much ANI and ALI as feasible. Consequently, State 911 staff, again, commend to the Commission determination of the feasibility and timetable of including **areas without selective routers in its Order's recent addition of IP callers to the E-9-1-1 network.**

Regarding **new registered locations without street addresses**, it appears to us that there is no serious, let alone insurmountable, obstacle to the user supplying a street address for any set physical location to which he switches IP service. If the caller is mobile, as in a car or Wi-Fi or Wi-Max area, ALI will require technological solution(s) analogous to wireless phase 2, ALI, GPS (satellite) solutions. Otherwise, State 911 staff are without the requisite technical expertise to determine what **impact the use of Wi-Fi and Wi-Max would have on the Commission IP-enabled services E9-1-1 requirements; whether the new IP or the old wireless rules**, or a third, perhaps hybrid, set of rules **should govern wireless IP connectivity.**

State 911 staff do not know whether it is necessary or economically feasible to require redundant trunks for the delivery of IP 911 calls and data to the appropriate selective router.

State 911 staff agree that the Commission **should require tougher customer notice requirements**; e.g., not only initial notice, but periodic notice thereafter, every month (e.g., with the bill) or quarter, perhaps. Paragraph 49, recognizes that “[a]dditional customer education efforts may well be necessary for users of portable interconnected IP-enabled services, for whom E9-1-1 service requires that they notify their service provider affirmatively of their location. For example, customers of portable interconnected likely will need to be instructed on how to register their locations with their providers, the need to update that information promptly when they relocate, and how to confirm that the registration is effective.” State 911 staff assert that such additional notification and instruction is necessary for the users, and that the Commission should so require.

62. State 911 staff lack the responsibility and expertise to comment on **whether the Commission can provide privacy protection by regulation without further congressional authorization.** State 911 staff do not think such protection should be left to state legislation, and State 911 staff request

federal statutory protection of IP-enabled services users' privacy regarding information supplied for 911, both for the citizens' rights to privacy and to encourage their and their providers to furnish the requisite 911 information to government 911 and, thus, public safety responders.

63. The rights of **persons with disability, their safety, and public safety generally dictate IP services provision of their access to IP 911 services as is technically feasible and financially possible**, but State 911 staff lack the authority and expertise to comment on that feasibility.

Respectfully submitted,

SC Budget and Control Board
Office of Research and Statistics:

Bobby M. Bowers, Director ,
Tony Laird, State 911 Coordinator
James W. Rion, State CMRS E9-1-1 Manager

By: s/ james w. rion

James W. Rion, Esq., State CMRS E9-1-1 Manager

CERTIFICATE OF SERVICE

I do hereby certify that I have this 6th day of September 2005 served the parties of record to this action with a copy of the foregoing **REPLY OF SOUTH CAROLINA STATE 911 OFFICE TO COMMENTS OF THE PUBLIC UTILITY COMMISSION OF TEXAS AND THE MICHIGAN EMERGENCY TELEPHONE SERVICES COMMITTEE** by electronic mail to the parties listed as follows:

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VIA (*) ELECTRONIC MAIL